PAROL EVIDENCE RULE — NATURE AND SCOPE OF RULE — INAPPLICABILITY IN CRIMINAL PROSECUTIONS. — A New York statute provides that the lessor of a residential building must furnish heat unless there is an agreement to the contrary. In the absence of such an agreement the lessor shall be deemed to have contracted to furnish heat. (NEW YORK SANITARY CODE, § 225.) The defendant was prosecuted for violating the statute. The lease with his tenants contained no stipulation as to heating, but he offered to prove a parol contemporaneous agreement with the tenants absolving him from furnishing heat. *Held*, that the evidence was admissible. *People* v. *Glickman*, 185 N. Y. Supp. 567.

Where criminal intent is the issue, parol evidence bearing upon the state of mind of the defendant at the time he acted is competent even though it contradicts the terms of a written instrument under which he acted. *State* v. *Newman*, 74 N. H. 10, 64 Atl. 761; *Walker* v. *State*, 117 Ala. 42, 23 So. 149. See *People* v. *Barringer*, 76 Hun, 330, 336–337, 27 N. Y. Supp. 700, 704. In the principal case, however, the element of intent does not enter, the defendant's guilt depending entirely on the existence of an agreement which would excuse his failure to act. On principle it might be argued that since the prior parol agreement is here sought to be used for the very purpose for which the writing has superseded it, it should be excluded even in a suit involving others than parties to the writing. See 4 WIGMORE, EVIDENCE, § 2446. But there are numerous authorities for the general proposition that the parol evidence rule does not apply except in suits between parties to the instrument or their privies. *Folinsbee* v. *Sawyer*, 157 N. Y. 196, 51 N. E. 994; *Northern Assurance Co.* v. *Chicago Mutual Bldg., etc. Assn*, 198 Ill. 474, 64 N. E. 979; *Kellogg* v. *Tompson*, 142 Mass. 76, 6 N. E. 860. This rule has been applied in a criminal case where, as in the principal case, no question of intent was involved, on the ground that the state was not a party to the writing. *Roselle* v. *Commonwealth*, 110 Va. 235, 65 S. E. 526, aff'd, 223 U. S. 716.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — PRESUMPTION OF VALIDITY OF SECOND MARRIAGE. — The defendant's first husband, when last heard from, had been injured in a railroad accident. Three years later she married the plaintiff. This suit for annulment is brought twenty years after the second marriage, alleging invalidity because of the prior marriage. *Held*, that annulment be denied. *Smith* v. *Smith*, 185 N. Y. Supp. 558.

Once a marriage ceremony is performed, there is said to be a presumption in favor of its validity which is "one of the strongest known" to the law. *Piers* v. *Piers*, 2 H. L. Cas. 331. See *Bruns* v. *Cope*, 182 Ind. 289, 105 N. E. 471. This presumption is then said to give rise to another presumption, that of the termination of a prior marriage by death or divorce. *Hunter* v. *Hunter*, 111 Cal. 261, 43 Pac. 756; *Potter* v. *Clapp*, 203 Ill. 592, 68 N. E. 81. "Conflicting" with this presumption is that of the continuance of life of the former spouse. *Gilleland* v. *Martin*, 3 McLean (U. S.) 490; *Chicago & Alton R. Co.* v. *Keegan*, 185 Ill. 70, 56 N. E. 1088. The former presumption, however, is usually held to be "stronger" than the latter and to overthrow it. *The King* v. *Twyning*, 2 B. & Ald. 386; *Vreeland* v. *Vreeland*, 78 N. J. Eq. 256, 79 Atl. 336. But see *Goset* v. *Goset*, 112 Ark. 47, 164 S. W. 759. But this method of reasoning is entirely too mechanical. The so-called "presumption of validity" is but an outgrowth of the common-law presumption of innocence, which is of no evidential value. See 4 WIGMORE, EVIDENCE, §§ 2506, 2511. The presumption of the continuance of life is merely an inference of fact, of more or less value in varying circumstances. *The Queen* v. *Willshire*, 6 Q. B. D. 366; *Com.* v. *McGrath*, 140 Mass. 296, 6 N. E. 515. But even granting that these presumptions should be recognized they could not properly be said to be "conflicting."